

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA * CRIMINAL DOCKET NO. 06-126

 v. * SECTION: "N"

KEVIN DERMODY *

 * * *

FACTUAL BASIS

If this matter would have gone to trial, the Government would have proven the following through competent evidence and testimony beyond a reasonable doubt:

The Jefferson Parish Public School System, located in the Eastern District of Louisiana, had and offered a employee trust/tax deferred employee benefit plan [pursuant to Internal Revenue Service Code F457(g)] to its employees which was administered and offered by the Jefferson Parish School Board (hereinafter referred to JPSB). This tax/trust deferred compensation plan offered to employees was known as the Jefferson Parish Public School System 457(g) Trust Deferred Compensation Plan (herein after referred to the 457 Plan). The 457 Plan was a tax deferred savings account

that was deducted from the payroll contributions on a pre-tax basis from the Jefferson Parish Public School System employees (hereinafter referred to as JPPSS participants) and the JPSB awarded a contract for administration of the plan to an individual and entity who the JPSB believed to be qualified and properly licensed to provide open and accurate administration services in order to properly operate the 457 Plan.

The defendant, Kevin Dermody, (Dermody) a resident of Illinois, was selected by JPSB beginning on or about July 2000 to be the administrator/investment manager for the 457 Plan and continuing through on or about May of 2001. Dermody represented himself to JPSB as the president of Emerald Investments Incorporated (hereinafter referred to as Emerald) and a registered representative of Towers Square Securities. Dermody was also a part owner/member and operator/manager of a company named Hilltopper Enterprises, LLC (hereinafter referred to as Hilltopper).

The defendant's co-conspirator, Randall Veselik, (Veselik) a resident of Illinois and a business partner and associate of Dermody in various investment concerns including but not limited to Hilltopper.

The defendant's co-conspirator, David Augustyn, (Augustyn) a resident of Illinois, was vice president and senior trust officer of Continental Community Bank and Trust Company located in Illinois. Augustyn acted as Continental's representative/agent and trustee for the 457 Plan and agreed to abide by the terms of the trustee agreement between the Jefferson Parish School System/JPSB and the Continental Community Bank.

The evidence would show that Veselik and Dermody provided false financial information to the JPSB after many numerous requests by JPSB to obtain financial information from Dermody. Shortly after securing the investment manger's contract in or about July 2000, Dermody directed approximately 3.5 million dollars of Jefferson Parish 457 funds be transferred to the Hilltopper account. Testimony and documentary evidence would be provided to show that Dermody and Veselik started Hilltopper Enterprises and were 50% partners in Hilltopper Enterprises. The Hilltopper account was not disclosed to JPSB or JPPSS participants.

Testimony and documentary evidence would show that sometime in 2001, JPSB and the National Association of Security Dealers (hereinafter referred to as NASD) were conducting an inquiry regarding the management of the 457 fund investment at Emerald, the

company operated by Dermody. Evidence would show that steps were being taken by the defendants to conceal the existence of the Hilltopper account by concealing records and to falsely create new documents to combat these inquiries.

Testimony and documentary evidence would show that defendants, working together, created contracts between JPSB and JPPSS and Hilltopper. These newly created contract agreements as referred to in the indictment were backdated to August 25, 2000. The purpose of backdating the documents was to make it appear to justify transactions that were not authorized and the disclosure of the Hilltopper account. These false documents as identified in the indictment refer to a four (4) page document entitled "Investment Management Services Agreement, S&P 500 Index Contract" and a three (3) page backdated document entitled "Agreement" both intentionally falsely backdated to August 25, 2000. Further evidence would show that these falsely backdated documents were sent by the defendants via the United States Mail to representatives to JPSB in May of 2001. Further evidence would be provided that a representative of JPSB would testify that they received these falsely backdated agreements by the United States Mail on or about May 31, 2001.

Evidence would show that as a result of the defendants scheme and artifice to defraud the JPPSS participants suffered losses

exceeding four million dollars. Finally, evidence would be presented to show that Tower Square Securities, Inc. paid the loss sustained by the JPPSS participants and that any remaining funds of the 457 Plan that were held in the Hilltopper account after January 2001 were returned to the 457 Plan.

KEVIN DERMODY (Date)
Defendant

JEFFREY BURG (Date)
Attorney for Defendant

THOMAS A. ROBERTS (Date)
Attorney for Defendant

JAMES R. MANN (Date)
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